

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUMA SE et al.,

CASE NO. 2:23-cv-00116-LK

Plaintiffs,

ORDER ON MOTIONS TO SEAL

V.

BROOKS SPORTS, INC.,

Defendant.

This matter comes before the Court on the motion of Plaintiffs PUMA SE and PUMA N.A. (collectively, “PUMA”) to seal their motion to compel and accompanying exhibits, Dkt. No. 166; *see also* Dkt. Nos. 171–73, as well as the motion of Defendant Brooks Sports, Inc. to seal and redact certain exhibits supporting its opposition to PUMA’s motion to compel, Dkt. No. 194; *see also* Dkt. Nos. 199–200. For the following reasons, the Court grants in part PUMA’s motion to seal and grants Brooks’ motion to seal.

I. BACKGROUND

The Court adopts the factual background articulated in its May 14, 2024 Order, Dkt. No. 154 at 2–5, its August 8, 2024 Order, Dkt. No. 188 at 1–3, and its October 11, 2024 Order, Dkt.

1 No. 209 at 2–4.

2 II. DISCUSSION

3 Brooks asks the Court to (1) permit PUMA to file Exhibits 2–10 to its motion to compel
 4 under seal and to redact confidential information in PUMA’s motion to compel and Exhibits 12
 5 and 17 to that motion, Dkt. No. 183 at 1; *see also* Dkt. Nos. 171-1; 171-2; 171-3; 171-4; 171-5;
 6 171-6; 171-7; 171-8; 171-9; 172; 173;¹ and (2) permit Brooks to file Exhibits A–C of the Pepperl
 7 Declaration to its Opposition under seal and to redact confidential information from Exhibit 4 of
 8 the Campbell Declaration, Dkt. No. 194 at 1; *see also* Dkt. Nos. 199–200. PUMA has indicated
 9 that it takes no position on whether these documents should be sealed. *See* Dkt. No. 166 at 2; Dkt.
 10 No. 194 at 4.

11 A. Legal Standard

12 Courts have recognized a “general right to inspect and copy public records and documents,
 13 including judicial records and documents.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172,
 14 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)).
 15 Accordingly, when a district court considers a sealing request, “a strong presumption in favor of
 16 access is the starting point.” *Id.* (cleaned up). This presumption, however, “is not absolute and can
 17 be overridden given sufficiently compelling reasons for doing so.” *Foltz v. State Farm Mut. Auto.*
 18 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing *San Jose Mercury News, Inc. v. U.S. Dist.*
 19 *Ct.*, 187 F.3d 1096, 1102 (9th Cir. 1999)).

20 The standard for determining whether to seal a record depends on the filing with which the
 21 sealed record is associated and whether such filing is “more than tangentially related to the merits
 22 of a case.” *See Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098–1102 (9th Cir. 2016).

23
 24 ¹ PUMA filed the motion to seal in accordance with Local Civil Rule 5(g)(3). Dkt. No. 166.

If the filing at issue is more than tangentially related to the merits of the case, the court must apply the “compelling reasons” standard to the motion to seal. *See id.* If the filing is only tangentially related to the merits, the party seeking to seal the records need only show “good cause.” *See id.*

Additionally, in this District, parties moving to seal documents must comply with the procedures established by Local Civil Rule 5(g). Under that rule, the party who designates a document as confidential must provide a “specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of: (i) the legitimate private or public interests that warrant the relief sought; (ii) the injury that will result if the relief sought is not granted; and (iii) why a less restrictive alternative to the relief sought is not sufficient.” LCR 5(g)(3)(B). The parties have certified that they conferred regarding their respective motions to seal as required by the Court’s Local Rules. Dkt. No. 166 at 2; Dkt. No. 194 at 4.

B. Good Cause Exists to Seal or Redact Some of the Documents at Issue

As a threshold matter, Brooks contends that the “good cause” standard should apply to both motions because the documents at issue were submitted as part of PUMA’s non-dispositive motion to compel and Brooks’ opposition to that motion. Dkt. No. 183 at 3–4; Dkt. No. 194 at 4. The Court agrees, as neither PUMA’s motion nor Brooks’ opposition goes to the merits of the case. *See Kamakana*, 477 F.3d at 1179; *Fed. Deposit Ins. Corp. v. Hanson*, No. C13-0671-JCC, 2014 WL 12102177, at *1 (W.D. Wash. June 13, 2014).

The “good cause” standard requires the party seeking protection to show “specific prejudice or harm” for each document it seeks to protect. *Foltz*, 331 F.3d at 1130. “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning,” do not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3rd Cir. 1986)). That the parties have executed a

1 protective order “does not presumptively entitle [them] to file confidential information under seal.”
 2 Dkt. No. 92 at 1.

3 1. Exhibits 2–10, 12, and 17 to PUMA’s Motion to Compel

4 Brooks contends that it “will suffer competitive harm if the information underlying
 5 Exhibits 2–10 [to PUMA’s motion to compel] is not protected” because “[t]hese exhibits contain
 6 internal communications between Brooks and its advertising agencies about the strategy and
 7 development of Brooks’ advertising campaigns as well as drafts of internal Brooks’ advertising
 8 strategy documents.” Dkt. No. 183 at 4.² These documents were designated as “Attorneys’ Eyes
 9 Only” under the protective order, signifying that they “include proprietary business, financial, and
 10 intellectual property information and trade secrets that are more sensitive or strategic than
 11 confidential material, the disclosure of which is likely to cause significant competitive harm.” Dkt.
 12 No. 183 at 1–2; *see also* Dkt. No. 92 at 2. Brooks avers that it “treats the strategy and development
 13 information contained in these internal documents as confidential and does not disseminate it
 14 publicly,” and therefore “[d]isclosure of this internal strategy and development information would
 15 cause Brooks significant competitive harm by revealing these processes to competitors[.]” Dkt.
 16 No. 183 at 4. Brooks raises the following concerns:

- 17 • **Exhibit 2:** Brooks states that the emails disclose information about the “comms
 framework” and “messaging hierarchy” related to the campaign. Dkt. No. 183 at 4; *see
 also* Dkt. No. 171-1. These documents are also fully redacted in **Exhibit 10**. Dkt. No.
 183 at 5; *see also* Dkt. No. 171-9.
- 21 • **Exhibit 3:** Brooks avers that this exhibit includes “feedback about [an] attached
 22

23 2 The sealed versions of Exhibits 2 to 10 of the Bolcar Declaration were filed as attachments to the sealed motion to
 24 compel. Dkt. No. 171; *see* Dkt. Nos. 171-1, 171-2, 171-3, 171-4, 171-5, 171-6, 171-7, 171-8, 171-9. The redacted
 versions of some of these exhibits appear to have been erroneously filed under seal. *See* Dkt. No. 170.

creative brief outlining key messaging for the campaign, target consumers, high-level creative deliverables, marketing channels, and other sensitive information.” Dkt. No. 183 at 4; *see also* Dkt. No. 171-2.

- **Exhibit 4:** Brooks notes that there is discussion in this exhibit between Brooks and the third-party agencies of a “draft creative deck” that “disclos[es] the key strategy, messaging, visuals, and creative platforms used to market the products in the campaign.” Dkt. No. 183 at 4; *see also* Dkt. No. 171-3.
- **Exhibits 5–7:** Brooks states that the emails in these exhibits contain discussions that “touch on draft campaign language, as well as the placement, order, and content of digital assets.” Dkt. No. 183 at 4–5; *see also* Dkt. Nos. 171-4, 171-5, 171-6.
- **Exhibits 8–9:** Brooks contends that the emails in these exhibits contain the “strategy of an advertising campaign,” as well as “internal feedback regarding the mobile and desktop campaign webpages, follow-on action items, and next steps[.]” Dkt. No. 183 at 5; *see also* Dkt. Nos. 171-7, 171-8.

Brooks also avers that the excerpts from the depositions of Carlee Bickley and Danielle Pepperl in Exhibits 12 and 17 to PUMA’s motion to compel should be redacted to prevent disclosure of “sensitive competitive information, including how internal work product is generated and used by Brooks and its advertising agencies in the context of creative campaigns and the specifics of campaign tactical decisions, including how slogans are drafted and reviewed[.]” Dkt. No. 183 at 5 (internal footnote and citations omitted); *see also* Dkt. Nos. 172–73.³

Courts have found “good cause” to protect the type of sensitive business information found in the aforementioned exhibits when the party seeking to seal articulates reasonable and legitimate

³ Brooks seeks to redact lines 45:1–4, 47:2–17 & 25, 48:1–7 & 20–25, 76:13–17, 131:5–25, 132:1–25, 133:1–14, 139:1–25, 140:1–10, 154:7–13 of Exhibit 12 and lines 110:14–24 of Exhibit 17. Dkt. No. 183 at 5.

1 concerns of competitive harm. *See, e.g., Zunum Aero, Inc. v. Boeing Co.*, No. C21-0896-JLR, 2023
 2 WL 7180636, at *3 (W.D. Wash. Nov. 1, 2023) (“The court has reviewed the documents and
 3 concludes that there is good cause for keeping them under seal due to Boeing’s concerns about
 4 maintaining its competitive status and cybersecurity position.”); *Sessa v. Ancestry.com Operations*
 5 *Inc.*, No. 2:20-CV-02292-GMN-BNW, 2023 WL 1795856, at *2 (D. Nev. Feb. 6, 2023) (finding
 6 good cause to seal exhibits that contain Ancestry’s “competitively sensitive information
 7 regarding,” *inter alia*, “strategies for the development and marketing of Ancestry’s services”);
 8 *Orthopaedic Hosp. v. DJO Glob., Inc.*, No. 3:19-cv-00970-JLS-AHG, 2021 WL 3015413, at *2
 9 (S.D. Cal. Feb. 22, 2021) (finding good cause to seal “confidential, business-sensitive marketing
 10 strategy”). This is particularly true when documents “contain the type of proprietary confidential
 11 information subject to . . . [a] protective order.” *Crosby v. Amazon.com, Inc.*, No. C21-1083-JCC,
 12 2023 WL 8472421, at *3 (W.D. Wash. Dec. 7, 2023).

13 After reviewing the exhibits, the Court concludes that there is good cause for keeping the
 14 majority of their contents under seal due to Brooks’ legitimate concerns that disclosure of its
 15 internal work product, development information, and marketing strategies could result in
 16 competitive harm. However, Brooks has not persuaded the Court that certain requested redactions
 17 to the Bickley deposition—namely lines 45:1–4 (Dkt. No. 172 at 4), 47:2–17 (*id.* at 6), 48:20–25
 18 (*id.* at 7), 76:13–17 (*id.* at 8), 139:14–25 (*id.* at 13), and 140:1–2 (*id.* at 14)—could, if disclosed,
 19 result in the claimed competitive harm. Brooks has also not persuaded the Court that the requested
 20 redactions from PUMA’s motion to compel (which paraphrase certain information in the exhibits
 21 to be sealed) could result in the claimed competitive harm. *See* Dkt. No. 171 at 9–11, 14–15; *see also* Dkt. No. 183 at 2 n.2. Therefore, the Court grants in part PUMA’s motion to seal and denies
 22 the motion with respect to all redactions in PUMA’s motion to compel and the lines in Exhibit 12
 23 referenced above.

1 2. Exhibits A–C and Exhibit 4 to Brooks’ Opposition to PUMA’s Motion to Compel

2 Brooks similarly alleges that it will suffer competitive harm if the information underlying
3 Exhibits A–C and Exhibit 4 to its opposition to PUMA’s motion to compel are not sealed. Dkt.
4 No. 194 at 4–6. Specifically, Brooks raises the following concerns:

- 5 • **Exhibit A:** Brooks notes that the statement of work between Brooks and Huge “reveals
6 specific, sensitive business information relating to the agreement between the two
7 entities, including budget amounts, specifics regarding the scope of Huge’s work such
8 as certain . . . ‘important initiatives,’ specific deliverables for Huge to provide, and
9 relevant timing and key milestones.” *Id.* at 5. Brooks is concerned that disclosure of
10 this exhibit “would cause Brooks significant competitive harm,” as it “would reveal to
11 its competitors the areas of Brooks’ business targeted for potential improvement, key
12 details regarding Brooks’ finances and certain budgets, the nature of specific on-going
13 and future Brooks products, and other information which could be used to undermine
14 Brooks’ position in the market.” *Id.*
- 15 • **Exhibits B–C:** Brooks notes that Exhibits B and C “are drafts of an internal ‘Run on
16 Nitro’ Creative Guide” that “reflect a variety of sensitive details regarding this
17 marketing campaign, including target audience, messaging hierarchy, specific verbiage
18 and messaging for campaign headlines, draft images and text for use on different
19 creative platforms and digital assets, and other internal Brooks strateg[ies] for
20 marketing its products to consumers.” *Id.* at 4. Brooks is concerned that “[d]isclosure
21 of this internal strategy and development information would cause Brooks significant
22 competitive harm by providing Brooks’ competitors unique insight into Brooks’
23 strategy and processes for marketing products to consumers, which competitors would
24 use as a basis to market their own products to the same consumer base.” *Id.* at 4–5.

- **Exhibit 4:** This exhibit contains additional excerpts from the Bickley deposition, including portions that discuss “how Brooks products are developed and sold,” “specifics regarding Brooks’ internal creative briefs and campaign decks, including how these documents are used,” and “other aspects of product development and marketing[.]” *Id.* at 5. Brooks avers that it “would suffer competitive harm from disclosure of this type of information, which reflects internal processes for developing and selling Brooks products.” *Id.*

After reviewing the exhibits, the Court concludes that there is good cause for keeping Exhibits A through C under seal due to Brooks' legitimate concerns that disclosure of internal work product, development information, and marketing strategies could result in competitive harm. Although good cause is lacking for some of the content in Exhibit 4, that information is available to the public elsewhere in the docket, so the Court will allow Exhibit 4 to remain sealed.

The Court therefore grants Brooks' motion to seal.

III. CONCLUSION

The Court GRANTS IN PART and DENIES IN PART PUMA's motion to seal, Dkt. No. 166, and GRANTS Brooks' motion to seal, Dkt. No. 194. Docket entries 171-1, 171-2, 171-3, 171-4, 171-5, 171-6, 171-7, 171-8, 171-9, 172-173 and 199-200 may remain under seal. The Clerk is DIRECTED to unseal docket entries 170 and 171. Within seven days of the date of this Order, Brooks is DIRECTED to file copies of Exhibits 12 and 17 with only the following lines redacted: lines 47:25, 48:1-7, 131:5-25, 132:1-25, 133:1-14, 139:1-13, 140:3-10, 154:7-13 of Exhibit 12; and lines 110:14-24 of Exhibit 17.

Dated this 15th day of October, 2024.

Lauren King
Lauren King
United States District Judge